

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

OLUJIMI AWABH BLAKENEY,

Plaintiff,

v.

SUSAN KARR, SGT. BRASWELL,  
C/O LARSON, CRAIG ADAMS,

Defendant.

No. C13-5076 BHS/KLS

**REPORT AND RECOMMENDATION**  
**Noted for: July 5, 2013**

Before the Court is the Motion to Dismiss of Defendant Craig Adams pursuant to Fed.R.Civ.P. 12(b)(6). ECF No. 20. Mr. Blakeney filed his response (ECF No. 25) and Defendant Adams filed a reply (ECF No. 27). Having carefully considered the motion and balance of the record, the Court recommends that Defendant Adams' motion be granted.

**BACKGROUND**

Mr. Blakeney, who is presently an inmate at the Washington State Penitentiary, alleges that when he was detained at the Pierce County Detention and Corrections Center (PCDCC), his incoming mail was returned to the sender without notice to him or to the sender and that he was not given an opportunity to appeal the mail rejection. Mr. Blakeney alleges that Defendant Adams "is the PCDCC Legal Advisor, who's [sic] job it is to make certain jail policy is in conformance with the United States Constitution...." ECF No. 8, § 8. Based on this allegation, Mr. Blakeney contends that "Defendant Adams violated his First, Fifth and Fourteenth

1 Amendment rights to freedom of expression and due process when he knew or should have  
2 known of these violations by jail policy and failed to so advise Defendant Karr.” *Id.*, § 16.

3 In response to Defendant Adams’ motion to dismiss, Mr. Blakeney provides matters  
4 outside of his Amended Complaint. Attached to his responsive brief is a declaration and  
5 attachments of another inmate, Charles Farnsworth. ECF No. 25, pp. 6-8. These materials are  
6 extraneous and have been excluded from consideration of this matter. *See Keams v. Tempe*  
7 *Technical Institute, Inc.*, 110 F.3d 44, 46 (9th Cir.1997).  
8

### 9 STANDARD OF REVIEW

10 In reviewing a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a court may grant a  
11 dismissal for failure to state a claim “if it appears beyond doubt that the plaintiff can prove no set  
12 of facts in support of his claim that would entitle him to relief.” *Keniston v. Roberts*, 717 F.2d  
13 1295, 1300 (9th Cir. 1983) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 [1957]). “Dismissal  
14 can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged  
15 under a cognizable theory.” *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir.  
16 1990).  
17

18 On a motion to dismiss, material allegations of the complaint are taken as admitted and  
19 the complaint is to be liberally construed in favor of the plaintiff. *Jenkins v. McKeithen*, 395  
20 U.S. 411, 421 (1969), *reh’g denied*, 396 U.S. 869 (1969); *Sherman v. Yakahi*, 549 F.2d 1287,  
21 1290 (9th Cir. 1977). Where a plaintiff is proceeding *pro se*, his allegations must be viewed  
22 under a less stringent standard than allegations of plaintiffs represented by counsel. *Haines v.*  
23 *Kerner*, 404 U.S. 519 (1972), *reh’g denied*, 405 U.S. 948 (1972). While the court can liberally  
24 construe a plaintiff’s complaint, it cannot supply an essential fact an inmate has failed to plead.  
25 *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992) (quoting *Ivey v. Board of Regents of*  
26

1 *University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). A motion to dismiss only admits, for  
 2 the purposes of the motion, all well pleaded facts in the complaint, as distinguished from  
 3 conclusory allegations. *Mitchell v. King*, 537 F.2d 385, 386 (10th Cir. 1976); *see also, Jones v.*  
 4 *Community Redevelopment Agency of City of Los Angeles*, 733 F.2d 646, 649 (9th Cir. 1984)  
 5 (conclusory allegations unsupported by facts are insufficient to state a claim under 42 U.S.C.  
 6 §1983).

### 8 DISCUSSION

9 To state a claim under 42 U.S.C. §1983, at least two elements must be met: (1) the  
 10 defendant must be a person acting under color of state law, (2) and his conduct must have  
 11 deprived the plaintiff of rights, privileges or immunities secured by the constitution or laws of  
 12 the United States. *Parratt v. Taylor*, 451 U.S. 527 (1981). Implicit in the second element is a  
 13 third element of causation. *See Mt. Healthy City School Dist Bd. of Educ. v. Doyle*, 429 U.S. 274,  
 14 286-87 (1977); *Flores v. Pierce*, 617 F.2d 1386, 1390-91 (9th Cir. 1980), *cert. denied*, 449 U.S.  
 15 875 (1980). When a plaintiff fails to allege or establish one of the three elements, his complaint  
 16 must be dismissed.

18 Mr. Blakeney asserts that it is Defendant Adams' job to advise jail personnel that their  
 19 policies or conduct is unconstitutional. The prosecuting attorney shall "[b]e *legal adviser* to all  
 20 county . . . officers. . . . in all matters relating to their official business . . . ." RCW 36.27.020(2)  
 21 (emphasis added). Mr. Blakeney alleges that Defendant Adams "failed to .... advise Defendant  
 22 Karr" of the unconstitutionality of the mail policy and that this alleged failure violated his  
 23 constitutional rights. However, liability under § 1983 arises upon a showing of personal  
 24 participation by the defendant. *See Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir.1979). Mere  
 25 negligence on the part of government officials is insufficient to establish liability under § 1983.  
 26

1 *See Daniels v. Williams*, 474 U.S. 327, 330-32, 106 S.Ct. 662, 664-65, 88 L.Ed.2d 662 (1986);  
2 *Davidson v. Cannon*, 474 U.S. 344, 347, 106 S.Ct. 668, 670, 88 L.Ed.2d 677 (1986).

3 Mr. Blakeney's reliance on *Hydrick v. Hunter*, 500 F.3d 978 (9th Cir. 2007) for his  
4 theory of supervisory liability is misplaced. *Hydrick* involved a class of civilly committed  
5 persons in a sexually violent predator facility alleging that the conditions of their confinement  
6 violated their constitutional rights. The 2007 *Hydrick* decision on which Mr. Blakeney relies  
7 was vacated by the United States Supreme Court in *Hydrick v. Hunter*, \_\_\_ U.S. \_\_\_, 129 S.Ct.  
8 2431, 174 L.Ed.2d 226 (2009). On remand, the plaintiffs were found to have pleaded  
9 insufficient facts to establish "plausible" claims against the defendants. The plaintiffs plead only  
10 that the defendants were liable for their own conduct because they created policies and  
11 procedures that violated the plaintiffs' rights and that they were deliberately indifferent to those  
12 constitutional violations. The Ninth Circuit found that the complaint was based on "conclusory  
13 allegations and generalities, without any allegation of the specific wrong-doing by each  
14 Defendant." *Hydrick v. Hunter*, 669 F.3d 937, 941 (9th Cir. 2012).

17 Even assuming all the facts stated by Mr. Blakeney are true, he has failed to state a claim  
18 against Defendant Adams under 28 U.S.C. § 1983. He has failed to allege specific wrong-doing  
19 by Defendant Adams. See *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (to be liable for  
20 "causing" the deprivation of a constitutional right, the particular defendant must commit an  
21 affirmative act, or omit to perform an act, that he or she is legally required to do, and which  
22 causes the plaintiff's deprivation.) In addition, Mr. Blakeney provides no authority for the novel  
23 proposition that an attorney who provides legal advice to a corrections facility can be held  
24 personally liable under § 1983 to every inmate in the facility for any perceived failure to provide  
25 legal advice.  
26

1 Mr. Blakeney's complaint contains no allegations concerning Defendant Adams' conduct  
 2 that could be construed as a constitutional violation nor has he identified any amendment that  
 3 could overcome the deficiencies of his legal claim against defendant Adams. Thus, leave to  
 4 amend need not be granted as it would be futile. *Bowles v. Reade*, 198 F.3d 752, 757-58 (9<sup>th</sup> Cir.  
 5 1999). Therefore, the undersigned recommends that his claims against Defendant Adams be  
 6 dismissed without leave to amend.  
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### 8 CONCLUSION

9 The undersigned recommends that Defendant Adams' motion to dismiss (ECF No. 20) be  
 10 **Granted** and Plaintiff's claims against Defendant Adams be **dismissed with prejudice** for  
 11 failure to state a claim.

12 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
 13 fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P.  
 14 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.  
 15 *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the  
 16 Clerk is directed to set the matter for consideration on **July 5, 2013**, as noted in the caption.  
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 18

19 **DATED** this 17th day of June, 2013.

20  
 21   
 22 Karen L. Strombom  
 23 United States Magistrate Judge  
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